

EXHIBIT E

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KANGAROOM.0008

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

KANGAROO MANUFACTURING,
INC., a Florida Corporation,

Plaintiff,

vs.

OOJAMI, LLC, a Delaware Corporation;
JOHN DOES 1-10 and JANE DOES 1-10,
inclusive; ABC ENTITIES 1-10; XYZ
PARTNERSHIPS 1-10,

Defendants.

Case No.

**COMPLAINT
~AND~
DEMAND FOR JURY TRIAL**

Plaintiff KANGAROO MANUFACTURING, INC. ("Plaintiff") alleges as follows:

PARTIES

1. Plaintiff is a Florida corporation with its principal place of business in Arizona.
2. Plaintiff is informed and believes and thereon alleges that Defendant OOJAMI, LLC ("Oojami") is a Delaware Limited Liability Company, doing business in the State of Arizona.
3. Kangaroo is ignorant of the true names and capacities of the defendants sued as John Does 1-10 and Jane Doe 1-10, inclusive, ABC Entities 1-10; XYZ Partnerships 1-10 and

1 Kangaroo therefore sues these defendants by such fictitious names. Kangaroo will amend this
2 Complaint to allege their true names and capacities when ascertained.

3 4. Plaintiff and all Defendants shall jointly be referred to as the “Parties”.

4 **JURISDICTION AND VENUE**

5 5. Plaintiff’s claims arise under the Trademark Act of 1946, as amended, 15 U.S.C.
6 §1051 et seq. (commonly referred to as the Lanham Act), the Copyright Act of 1976, as
7 amended, 17 U.S.C. 100 et seq., and common law. This Court has jurisdiction over the subject
8 matter of the federal claims pursuant to 28 U.S.C. §§1331 and 1338, the Lanham Act (15
9 U.S.C. §1051 et seq.), including but not limited to 15 U.S.C. §1121, as amended, 28 U.S.C.
10 §2201, and Federal Rule of Civil Procedure 13 and 57.

11 6. The Parties are citizens of different states and the amount in controversy exceeds
12 \$75,000, exclusive of costs and interest.

13 7. As Plaintiff has accused Oojami of infringing copyrights and engaging in unfair
14 competition, an actual case or controversy exists between the parties with respect to the alleged
15 copyright and infringement thereof. Accordingly, this Court has jurisdiction under the
16 Declaratory Judgment Act, 28 §§U.S.C. 2201 through 2202.

17 8. Venue is proper before this court pursuant to 28 U.S.C. §1391 and 1400(a) and
18 upon information and belief, Oojami is doing business in Arizona and has caused events to
19 occur in Arizona giving rise to the claims in this case.

FACTUAL ALLEGATIONS

1
2 9. Kangaroo is a manufacturer, distributor, wholesaler, and creator of value-priced
3 toys and novelty products that are sold in retail outlets and online, most commonly on
4 Amazon.com. Kangaroo's business is primarily conducted through the distribution of
5 catalogs, an external sales force, and its internet website. Kangaroo's products are widely
6 disseminated on the open market.
7

8 10. Kangaroo's goods, by reason of their high quality, have come to be known to the
9 purchasing public as conforming to certain high quality control standards. As a result, the
10 Kangaroo goods, associated trademarks and copyrights, and the goodwill associated with them
11 are of tremendous value to Kangaroo and its authorized licensees and sellers.
12

13 11. Kangaroo's top-selling SKU is for its Original Super Cool Slime. The artwork
14 is the subject of copyright registration number VA-2-007-212. A true and correct copy of
15 registration number VA-2-007-212 is attached to the Complaint as Exhibit A.
16

17 12. On or around January 12, 2018, Kangaroo discovered that the listing on
18 Amazon.com for ASIN¹ B075RPWWFW, Oojami's Super Cool Slime (the "Infringing
19 Product"), violated Kangaroo's copyrighted materials.
20

21 13. Specifically, the Infringing Product item detail page for ASIN B075RPWWFW
22 made use of Kangaroo's artwork, which is the subject of copyright registration number VA 2-
23 007-212, without authorization. The bottle shape, three-tier slime coloration, label art, and
24

25 _____
26 ¹ ASIN stands for "Amazon Standard Identification Number."

1 writing on the bottle of Oojami's product are all identical or nearly identical to that of
2 Kangaroo's Original Super Cool Slime.

3 14. The Infringing Product is substantially similar and confusingly similar to the
4 Kangaroo Original Super Cool Slime. The Infringing Product is aimed directly at Kangaroo's
5 core product. Because Oojami's Infringing Product appears on Amazon, which Kangaroo
6 sellers also use to sell Kangaroo products, it is highly likely that consumers will view Oojami's
7 products sold side-by-side with Kangaroo products.
8

9 15. Oojami's sale and distribution of the Infringing Product is likely to cause
10 confusion, mistake, or deception regarding the source of the parties' respective products and
11 commercial activities.
12

13 16. Kangaroo has not authorized Oojami to market, sell, license, distribute, publicly
14 display, or prepare derivative works of the Kangaroo Original Super Cool Slime.
15

16 17. Upon information and belief, Oojami's actions described above are intentional,
17 willful, and designed to wrongfully profit from the goodwill of Kangaroo's products and
18 services.
19

20 **COUNT I**

21 **(Infringement of Copyright, 17 U.S.C. §501)**

22 18. Kangaroo hereby realleges each and every allegation of the Complaint contained
23 in the foregoing paragraphs as though fully set forth in this claim for relief.

24 19. Kangaroo is the owner of the Kangaroo Original Super Cool Slime and owns
25 valid copyright for associated artwork.
26

1 20. Oojami has infringed Kangaroo's registered copyrights by reproducing and/or
2 distributing copies of, and preparing derivative works of, Kangaroo's product without
3 Kangaroo's authorization.

4 21. This wrongful conduct constitutes a violation of Section 501 of the Copyright
5 Act, 17 U.S.C. §501.
6

7 22. Oojami's conduct has irreparably damaged Kangaroo and will continue to do so
8 unless restrained by this Court.

9 23. Kangaroo is entitled to an injunction, statutory damages, actual damages, and an
10 award of attorney fees and costs as provided under 17 U.S.C. §504.
11

12 **COUNT II**

13 **(Unfair Competition; False Designation of Origin, 15 U.S.C. §1125(a))**

14 24. Kangaroo hereby realleges each and every allegation of the Complaint contained
15 in the foregoing paragraphs as though fully set forth in this claim for relief.
16

17 25. Kangaroo owns the Copyrights for Kangaroo Original Super Cool Slime
18 described above and has established rights to the Copyright and to Kangaroo's trade name.

19 26. Oojami's use in commerce of the Infringing Product as described above is likely
20 to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Oojami's
21 products and services, or the affiliation, connection, or association of Oojami with Kangaroo.
22

23 27. As a result of such confusion, customers are likely to believe incorrectly that
24 Kangaroo authorizes and controls the sale of Oojami's products or that Oojami is associated
25 with or related to Kangaroo.
26

1 28. This conduct constitutes “passing off” by expressly and/or impliedly
2 representing that the Infringing Product is a product from Kangaroo and/or is the same as
3 Kangaroo’s Original Super Cool Slime.

4 29. Oojami’s acts have injured or are likely to injure Kangaroo’s reputation,
5 business, and relations with merchants and customers by causing confusion about and
6 dissatisfaction with the products and services of Kangaroo and a loss of sales and market share
7 to Oojamis.

8 30. Oojami’s conduct constitutes a violation of Section 43(a) of the Lanham Act, 15
9 U.S.C. §1125(a).

10 31. Oojami’s conduct has irreparably damaged Kangaroo and will continue to so
11 damage Kangaroo unless restrained by this Court.

12 32. Kangaroo is entitled to an injunction under 15 U.S.C. §1116, as well as damages,
13 Oojami’s profits, and the costs of this action under 15 U.S.C. §1117.

14
15
16
17 **COUNT III**

18 **(Common Law Unfair Competition)**

19 33. Kangaroo hereby realleges each and every allegation of the Complaint contained
20 in the foregoing paragraphs as though fully set forth in this claim for relief.

21 34. Oojami’s wrongful use of the Infringing Product and other acts described above
22 constitutes unfair competition under the common law of the State of Arizona.
23
24
25
26

1 35. This conduct constitutes “passing off” by expressly and/or impliedly
2 representing that the Infringing Product is a product from Kangaroo and/or is the same as
3 Kangaroo’s Original Super Cool Slime.

4 36. Oojami’s acts have irreparably damaged Kangaroo and will continue to so
5 damage Kangaroo unless restrained by this Court.
6

7 37. Kangaroo is without an adequate remedy at law and is entitled to an injunction
8 as well as damages in an amount to be proven at trial.

9 WHEREFORE, Kangaroo prays for Judgment:
10

11 A. Declaring Oojami has willfully infringed Kangaroo’s copyrights in violation of
12 17 U.S.C. §501 and order Oojami to pay Kangaroo the maximum amount of statutory
13 damages available under 17 U.S.C. §504(c) in an amount of \$150,000 per infringement;

14 B. That the Court order Oojami to account for and pay Kangaroo all profits derived
15 by reason of Oojami’s sale and use of the Infringing Product;
16

17 C. That the Court order Oojami to pay to Kangaroo all damages incurred to
18 Kangaroo by reason of Oojami’s sale and use of the Infringing Product;

19 D. That the Court order Oojami to deliver to Kangaroo all copies or versions of the
20 Infringing Product in the possession or control of Oojami;
21

22 E. That the Court preliminarily and permanently enjoining Oojami from infringing
23 Kangaroo’s copyrights.

24 F. That the Court award Kangaroo its costs, and reasonable attorneys’ fees
25 pursuant to 17 U.S.C. §505.
26

1 G. That the Court award such other relief as the Court deems proper.

2 **JURY DEMAND**

3 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Kangaroo hereby demands
4 a trial by jury.

5 RESPECTFULLY SUBMITTED this 17th day of January, 2018.

6
7 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

8
9 By: _____



10 Timothy R. Grimm

11 Edith I. Rudder

12 1400 East Southern Avenue, Suite 400

13 Tempe, Arizona 85282

14 *Attorneys for Plaintiff Kangaroo Manufacturing*

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maui A. Pallante

United States Register of Copyrights and Director

Registration Number

VA 2-007-212

Effective Date of Registration:

March 24, 2016

Title

Title of Work: Kangaroo Original Super Cool Slime

Previous or Alternate Title: Group registration published photos; approx. 7 photographs

Completion/Publication

Year of Completion: 2015

Date of 1st Publication: April 23, 2015

Nation of 1st Publication: United States

Author

Author: Kangaroo Manufacturing, Inc. - employer for hire of Jon Lamar
Author Created: photograph
Work made for hire: Yes
Domiciled in: United States

Copyright Claimant

Copyright Claimant: Kangaroo Manufacturing, Inc.
1843 US Hwy 27 N, Sebring, FL, 33870, United States

Rights and Permissions

Organization Name: Nolan Heimann LLP
Name: David Schnider
Email: dschnider@nolanheimann.com
Telephone: (818)574-5710
Address: 16133 Ventura Blvd., Ste 820
Encino, CA 91436 United States

Certification

Name: David Schnider
Date: March 24, 2016

Type of Work: Visual Material

Registration Number / Date:
VA0002007212 / 2016-03-24

Application Title: Kangaroo Original Super Cool Slime.

Title: Kangaroo Original Super Cool Slime.

Description: Electronic file (eService)

Copyright Claimant:
Kangaroo Manufacturing, Inc.

Date of Creation: 2015

Date of Publication:
2015-04-23

Nation of First Publication:
United States

Authorship on Application:
Kangaroo Manufacturing, Inc. - employer for hire of Jon
Lamar, employer for hire; Domicile: United States.
Authorship: photograph.

Alternative Title on Application:
Group registration published photos; approx. 7 photographs

Rights and Permissions:
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Copyright Note: C.O. correspondence.

Names: Kangaroo Manufacturing, Inc.

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